Plumbers and Pipefitters Local Union No. 403, affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, AFL-CIO (Pullman Power Products) *and* Celestino Manuel Martin, John P. Martin, and Kenneth M. Baldwin. Cases 31-CB-3860, 31-CB-3938, and 31-CB-3969

March 22, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On September 10, 1981, Administrative Law Judge Clifford H. Anderson issued the attached Decision in this proceeding.[1] Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Plumbers and Pipefitters Local Union No. 403, affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(g):

"(g) Cause, at its expense, the attached notice to be printed in any newsletter or newspaper prepared by the Union and distributed to its members."

2. Substitute the attached Appendix for that of the Administrative Law Judge.

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice. The Board has ordered us to:

1. Obey the terms of this notice.

2. Publish this notice in any union newsletter or newspaper.

3. Mail a copy of this notice to Pullman Power Products, to all Plumbers local unions in Plumbers District 16, to all Plumbers local unions whose members were discriminated against by us, and to all employee applicants who were denied employment opportunities by us because they were not members of Plumbers and Pipefitters Local Union No. 403, affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, AFL-CIO.

The National Labor Relations Act prohibits unions from causing or attempting to cause an employer to discriminate against an employee because of his membership or lack of membership in a union. Union-operated exclusive hiring halls must be operated on a nondiscriminatory basis.

WE WILL NOT cause or attempt to cause Pullman Power Products or any other employer to discriminate against any of the following employees, or any other employees, because of their lack of membership in Local 403 by failing to allow them to sign our hiring hall out-of-work books, or by not dispatching them consistent with nondiscriminatory application of the contractually established hiring hall referral system.

Steve Selby	Rick Dumouchelle
Arthur Mathis	Virgil Walker
Charles Gamble	Al Furtado
Harold Holder	Sherman Conner
Don Tilley	George Carl
Leo Bernhardt	Richard Sims
Andrew Peak	Ben Koens

[1] On September 14, 1981, the Administrative Law Judge issued an Errata to his Decision.

[2] The Administrative Law Judge inadvertently stated that the Employer's shutdown of work was to take effect on June 1, 1980, when in fact the shutdown was effective July 1, 1980. The Administrative Law Judge also inadvertently referred to June 22, instead of July 22, as the alleged commencement of Respondent's refusal to dispatch nonmembers, and stated that the contract ratification process occurred in June and August, rather than July and August. We hereby correct these errors.

[3] In view of the fixed number of identified discriminatees and the Administrative Law Judge's provision for the posting and distribution of the notice, we find it unnecessary to require Respondent to publish the notice in a newspaper of general circulation. We shall delete this provision from the Administrative Law Judge's recommended Order and modify the notice accordingly.

Angelo Guidice	Sadao Yabuno
Kenneth Baldwin	Sage Dibble
John Hughes	John Nagy
Doug King	Terry Denning
Ken Harris	John Martin
Celestino Martin	John Maloney

WE WILL NOT operate our exclusive hiring hall in a manner which discriminates against nonmembers or Local 403 and/or discriminates against members of other locals affiliated with the United Association.

WE WILL NOT refuse to allow members of local unions affiliated with the United Association other than Local 403 to register on the hiring hall out-of-work lists.

WE WILL NOT fail and refuse to dispatch members of local unions affiliated with the United Association other than Local 403 who would have been dispatched in accordance with contractually established referral system policy and practice but for our discrimination against them.

WE WILL NOT threaten and coerce employees by telling them that the Union caused the July 1980 Pullman Power Products job shutdown and thereafter caused the job to be redispatched through the union hiring hall in order to eliminate from employment members of local unions other than Local 403 and to replace those employees with members of Local 403.

WE WILL NOT require employee referral applicants who are members of local unions other than Local 403 to sign their travel cards in a manner indicating they were no longer seeking work in the area thus allowing the Union to terminate their future employment opportunities at will.

WE WILL NOT threaten employees with harm, loss of employment, or denial of future employment unless they drop charges filed with the National Labor Relations Board against Local 403.

WE WILL NOT in any like or related manner restrain or coerce employees or cause employers to restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL notify each employee named above and Pullman Power Products that we have no objection to said employees' employment and/or continued employment.

WE WILL make the employees named above whole for losses they may have suffered as result of our discrimination against them, with appropriate interest.

WE WILL keep and retain for the period Pullman Power Products employs our hiring hall to procure unit employees at the project permanent written records of our hiring and referral operations which will be adequate to disclose fully the basis on which each referral is made, and, upon the request of the Regional Director for Region 31, or his agents, make available for inspection, at all reasonable times, any records relating in any way to the hiring and referral system.

WE WILL submit four quarterly reports to the Regional Director, due 10 days after the close of each calendar quarter, concerning the employment of the nonmember applicants listed above. Such reports shall include the date and number of job applications made to us, the date and the number of actual job referrals by us, and the length of such employment during such quarter period.

WE WILL place the referral registers, for the above-described period, on a table or ledge in the hiring hall for easy access and inspection by the applicants, as a matter of right, upon the completion of each day's entries in such registers.

PLUMBERS AND PIPEFITTERS LOCAL UNION NO. 403, AFFILIATED WITH THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY, AFL-CIO

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge: This matter was heard before me on April 21, 22, and 23, 1981, in Santa Maria, California, and on May 4, 1981, in San Luis Obispo, California. The case arose as follows.

On August 13, 1980, Celestino Manuel Martin filed a charge in Case 31-CA-10318 against Pullman Power Products (herein the Employer) and a charge in Case 3-CB-3860 against Plumbers and Pipefitters Local Union No. 403, affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, AFL-CIO (Respondent or the Union and the United Association or the Plumbers International respectively). On September 30, 1980, the Regional Director for Region 31 of the National Labor Relations Board (Regional Director and Board, respectively) issued an order consolidating cases, consolidated complaint and notice of hearing with respect to these two cases. On October 10, 1980, John P. Martin filed a charge in Case 31-CB-3938 against Respondent which he amended on November 24, 1980. On November 24, 1980, Martin filed a charge in Case 31-CA-10656 against the Employer. On

October 31, 1980, Ken M. Baldwin filed a charge in Case 31-CB-3969 against Respondent which he amended on December 16, 1980. On December 29, 1980, the Regional Director issued an order consolidating cases, amended consolidated complaint and notice of hearing consolidating all of the above cases. On March 10, 1981, the Regional Director issued an order severing cases and withdrawing in part amended consolidated complaint and notice of hearing severing Cases 31-CA-10318 and 31-CA-10656 from the instant proceeding.

All parties were given full opportunity to participate at the hearing, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file post-hearing briefs.[1]

Upon the entire record[2] herein, including briefs submitted by the General Counsel and Respondent, and from my observation of the witnesses and their demeanor, I make the following:[3]

FINDINGS OF FACT

I. JURISDICTION

The Employer is a division of the M. W. Kellog Company, a Delaware corporation which is in turn a subsidiary of Wheelabrator-Fry.[4]

At all relevant times the Employer has performed pipe installation work at a nuclear power plant under construction for the Pacific Gas Electric Company at Diablo Canyon, California (Project or Diablo Canyon). The Employer has annually enjoyed revenues in the millions of dollars from its Project work and annually purchases goods and materials for its Project work of a value exceeding $50,000 from suppliers located outside the State of California.

II. THE LABOR ORGANIZATION

Respondent is an organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

At all relevant time Gene Davis has been Respondent's president and the Union's job steward for the Employer's employees at the Project. C. Ray Skidgel has been Respondent's business manager and Bobbie T. Swearengen has been Respondent's dispatcher/secretary. Don Bachus and Ray Tillman have been members of Respondent's executive board. Each has at relevant times been an agent of Respondent.[5]

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Contentions*

The General Counsel in its final amended consolidated complaint, as further amended orally at the hearing, alleges various statements by Respondent's agent made to employees and employee applicants as violative of Section 8(b)(1)(A) of the National Labor Relations Act. It further alleges that Respondent engaged in a course of conduct designed to discriminate against nonmembers who were employed by the Employer by failing and refusing to allow the hiring hall registration of, or to permit the dispatch of, employees to the Employer because of the lack of membership of the referred employee in the Union in violation of Section 8(b)(1)(A) and (2) of the Act.

Respondent generally denies the conduct attributed to its agents and further denies that certain of the conduct alleged is violative of the Act. With respect to the allegations regarding the prevention of return of the Employer's nonmember employees to their former employment and the registration and dispatch refusals, Respondent makes several arguments. First, Respondent attacks the sufficiency of the amended complaint to create a valid "class" of discriminatees without first meeting the procedural requirements of the Federal Rules of Civil Procedure for certification of such a class. Second, on the merits, Respondent alleges that the actions its agents undertook with respect to the dispatch of employees were motivated by legitimate trade union objectives free from any consideration of impermissible preference based on membership or nonmembership in the Union.

B. *Events*

1. Background

a. *The bargaining relationship and dispatching procedure*

The Employer and its predecessor companies have been engaged in the installation of piping, pipe supports, and pipe break restraints at the Project for many years. In so doing it primarily employs pipefitters and welders. The Employer and the United Association, the International Union of which Respondent is but one of many affiliated local unions (locals), have at relevant times had a collective-bargaining relationship covering a unit of employees including the pipefitting and welders employed by the Employer at the Project (unit). This relationship has been reflected at all relevant times in a collective-bargaining agreement (National Agreement) covering the unit which provides for certain terms and conditions of

[1] The date for submission of briefs was set at the close of the hearing for June 8, 1981, but was extended by the Deputy Chief Administrative Law Judge until July 8, 1981.

[2] The General Counsel's unopposed motion to correct the transcript is granted.

[3] A significant portion of the facts appearing below were not disputed. Unless otherwise noted, these findings are based upon admitted pleadings, stipulations, admissions, unchallenged documents, or the uncontested testimony of credible witnesses.

[4] Apparently the corporate structure and ownership of the Employer's controlling corporations were in flux in 1980 with a formal change in corporate ownership occurring on November 6, 1980. The legal titles of the various holding entities at various times are unnecessary to resolve in this proceeding. For that reason I have deleted the attribution of the Employer as "a division of Pullman, Inc." in the original case caption and have not substituted any other divisional ascription.

[5] These agency relationship were admitted by Respondent in its initial answers to the various complaints but were denied in its answer to the final consolidated complaint. The record evidence was undisputed as to title and function of each agent as well as the holding out by Respondent of these individuals as possessing authority to fulfill their respective functions. I find each to have sufficient apparent authority to make them agents of Respondent within the meaning of the Act.

employment to be established by separate contracts entered into on a local level between the Employer and various locals including the Union (local agreements and, between the Employer and the Union, the local agreement). If the local agreements expire the National Agreement provides that the Employer may lock out its employees or the local unions strike in support of their respective positions without violating the National Agreement.

The applicable contracts contained at all times relevant herein identical provisions establishing the Union as the exclusive source of unit job applicants. At all times material the Employer and the Union have utilized the employment system set forth in their national and local agreements. The Union maintains a dispatch office at its union hall where it keeps its work registration records. The Employer relies on the Union's dispatch process exclusively for its unit employees including the unit's supervisory staff at certain levels.

The contracts have at all times material contained a detailed registration system which provides for dispatch priority by categories with the employees in a superior category having priority over all employees in inferior categories. Within a given category, chronological order of registration controls order of dispatch. The various categories require a qualifying number of hours worked as journeymen in a particular geographical area. Group one requires a given number of hours worked in the local area, group two in a larger area, and so on. These priorities obtain only to the hiring process and do not provide bumping privileges; i.e., higher qualified applicants do not replace lower qualified employees: once an applicant obtains employment he is not displacable during his employment by other applicants.

The Employer may request either a qualified welder or pipefitter. An applicant with the required skill would then be dispatched from the union office in accordance witht the above priorities. The Employer, under the contract, may also request specific named individuals be disptached to it providing the individuals requested are registered in group one or two and further providing that the total number of "name requested" individuals does not exceed 50 percent of the total number of reference requested.

b. *Pre-1980 bargaining history*

John W. Ryan, the Employer's resident construction manager and chief officer at Diablo Canyon, testified credibly regarding the recent history of work stoppages involving Respondent antedating the events here in dispute. When the local agreement expired in 1974, the Employer chose to shut down its Diablo Canyon operations pending agreement on a new local agreement.[6] Unit employees were not then fired, laid off, or changed in their payment status by the Employer although, of course, they did not work and were not paid for the period of the shutdown. After the shutdown continued for a period of months, the Employer determined that it could not resume operations with all full crew because—as a result of the duration of the shutdown—its welder employees had suffered the lapse of their welding certifications the necessary restoration of which would require time-consuming retesting.[7] Accordingly, even though the local dispute had by that time been resolved, the Employer notified its pipefitters and welders that they were being formally laid off due to a "reduction in force." Thereafter, the crew were slowly reemployed as the certification process and work rescheduling would allow. Other than in this instance, the Employer had regularly taken back its unit employment complement as a body to resume operations after a labor dispute—economic or jurisdictional—without modifying the employees' status or utilizing the Union's hiring hall procedures to effect, ratify, or approve the employment resumption.

In 1979 some 27 unit employees (sometimes referred to as "the 27") had occasion to engage in certain conduct for which the Employer terminated them and thereafter refused to consider them eligible for rehire. The Union disputed the Employer's action but, until the events discussed below, had not persuaded the Employer to rescind its determination to refuse these individuals reemployment. The majority of these employees were members of the Union, a few were travelers.[8]

2. The 1980 shutdown and related Events[9]

The 1977–80 local agreement expired by its terms on June 30. On June 24, Employer through its vice president, Evans, notified the United Association and the Union that it was exercising its contractual right to "stop work" at the Project effective June 1 until "a new agreement is reached." The Employer was not negotiating directly with the Union or the United Association but rather had agreed to adopt the contract terms reached in the independent negotiations between a multiemployer association and the local unions in District 16. Those negotiations had not culminated in an agreement as the contract's expiration date approached so that the Employer and the Union could well anticipate the Employer's announced shutdown would occur.

[6] Ryan also testified that the Employer normally did not bargain directly with the Union concerning a new local agreement but rather adopted the contract negotiated between a multiemployer association—of which the Employer was not a member—and District 16, a group of southern California locals of the United Association including the Union. The local agreement and contracts between the United Association and various employers in the southern California area apparently expired simultaneously and to a certain extent negotiations were conducted directly or indirectly by a single negotiation process between the District and the various employers.

[7] The evidence concerning the specifics of the welder certification process is scanty. I judicially notice that certain craftsmen including welders engaged in the contruction of nuclear power plants which the Diablo Canyon plant is intended to be, must maintain current certifications reflecting minimum levels of knowledge and skill to allow the completed structure to be ultimately licensed for operation by governmental authorities.

[8] While, insofar as the record reflects, all unit employees at relevant times were members of one or another of the various locals of the United Association, those individuals who were members of the Union's sister locals were commonly referred to in the record as travelers and will be so refered to herein. Traveler status is solely determined by the identity of the local in which the employee holds membership. It is not indicative of the location of the employee's temporary or permanent residence nor, importantly, of the dispatch group for which a given employee qualifies.

[9] Dates hereinafter are 1980 unless otherwise indicated.

Gene Davis was the Union's president and unit job steward at Diablo Canyon. As the June 30 shutdown approached, Davis informed unit employees in groups and held individual discussions concerning the impending closure. He told union members to go to the union hall and register on the Union's dispatch out-of-work books, explaining that the Union's hiring hall would be utilized to restaff the job at the end of the shutdown. He told the travelers to go to the union hall, to "pull" or withdraw their travel cards,[10] and to return to their home locals.

After the job shutdown, paychecks were distributed to unit employees on July 3 in a Project parking lot. Davis there spoke to various employees regarding the shutdown and its consequences. Celestino Martin testified that he was present when Davis was asked by a welder, Mark Fletcher, when travelers would be allowed to return to work after the strike. Davis answered,

> They won't be allowed to. That's one of the big reasons for this strike: to get travelers off this job and our Union back in 403 hands . . . . We were offered an interim agreement but for this reason, we didn't take it.

Over a period of days before and after the job shutdown, consistent with Davis' instructions, the union members went to the union hall and signed the appropriate out-of-work book indicating an interest in being dispatched to the Project when work resumed. The Union hall employee responsible for maintaining the referral and registration system was Bobby Swearengen, the Union's dispatcher and secretary. During the same period, a number of travelers withdrew their travel cards from the union hall. Thus, unit employee Terry Denning testified that he requested and received his travel card from Swearengen on July 2. In so doing he told her that while there was considerable "squabble" regarding the Union's procedures regarding the project shutdown, he felt it was "right." Swearengen responded that it was "right" and that Denning would probably be "one of the first hires on when it came time to do it again."

Other travelers, however, did not withdraw their travel cards from the Union but rather sought of Swearengen or Skidgel an opportunity to register on the out-of-work books.[11] Through July, August, and until mid-September, various travelers were regularly and repeatedly refused an opportunity to sign the out-of-work books by both Swearengen and Skidgel.

During June and early July negotiations continued between the multiemployer association and various locals unions comprising District 16, including the Union, concerning new contracts. Skidgel was involved in those negotiations. Two agreements, were being negotiated: an industrial agreement—relevant to the instant case— and a plumbing and heating agreement. On the evening of July 15, the parties, with Skidgel present, signed a memorandum of agreement covering the industrial agreement. A new plumbing agreement was reached by July 21. Thereafter a series of meetings were held among the locals, which culminated in the contract's ratification on July 31.

On July 15, Skidgel wired the Employer that the Union regarded the Employer's layoff as a termination of unit employees. Thus, the Union asserted, when the Employer sought to restaff the Project it must do so through the contractual dispatch procedures; i.e., through the Union's hiring hall.

Ryan received the mailgram on July 16 and responded by wire on that same day asserting that the Employer had not fired its employees but had rather exercised its contractual right to stop work during the time there was no local agreement. It added: "we must insist that those employees on the payroll as of 4 p.m. June 30 be returned to work upon negotiation of new Agreement." The Employer did not received a response to this wire from the Union. Within a few hours of sending his wire Ryan learned of the agreement on contract terms reached between District 16 and the multiemployer association. Despite this agreement the employees in the unit did not thereafter return to their former jobs. Ryan communicated with his superiors and on July 23 to the Employer's vice president, Evans, sent a letter to the president of the United Association, Martin J. Ward, recapitulating the above events and the positions of the Employer and the Union. It stated further: "[W]e cannot agree that the dispatch procedure applies. We do not want to face the possibility of qualifying and orientating new personnel at this stage of completion." The United Association's assistance in resolving the dispute was solicited. Ward responded by wire stating that the Employer's communication had been forwarded to International Representative Robert Costello who had been asked to "investigate and resolve" the matter.

On August 1, Ryan met with Costello and Skidgel at the union hall. Ryan apparently initially sought the return of the June 30 crew to the job as a body. That request failing, Ryan tendered to Skidgel a list of about 70 names of former employees which he requested be dispatched to the job along with at least a matching number of unnamed individuals. Skidgel told Ryan that the Union would soon commence dispatching referents. In this meeting Skidgel also asked that Ryan remove the "ineligible for hire" status of the 27 employees fired in 1979. Ryan refused.

The Union commenced dispatching union members to the Employer on August 4 and within approximately 1 week the union members who had been working in June and had thereafter signed the out-of-work books were again on the job. No travelers, including those on Ryan's name request list of August 1, were dispatched. Ryan from time to time requested additional referents as the personnel requirements of the job increased. These requests were both for referents generally and by specific name request. For example, on August 5 or 6, Ryan called Dispatcher Swearengen and asked her to dispatch

[10] The United Association's internal procedures allow a local member to work at jobs under contract with other locals. The home local issues the member a "travel card" which may be filed with another local when seeking work in that jurisdiction. See *infra* for greater detail.

[11] Given the experience qualifications required to sign the book of a given group, applicants sign in chronological order and are dispatched, absent special circumstances, in that order within the group. There is no evidence that qualifying individuals had ever previously been denied the opportunity to "sign the books."

former employee and traveler Richard Dumouchelle to the job. She responded only that "he's Local 230," a sister local of the Union. Dumouchelle was not dispatched until mid-October. During this period no specific request for the dispatch of a traveler was honored.

Ryan, Skidgel and, perhaps, Costello met again in the latter part of August. Skidgel again sought reemployment of the 27 but Ryan refused to take them back. Ryan requested that his former general foreman and traveler Donald Tilley be dispatched immediately inasmuch as he had been included on his earlier dispatch request list. Skidgel merely shook his head negatively and did not further respond. Another individual, a union member, was ultimately selected by the Employer to fill the position previously held by Tilley before the shutdown.

3. Dispatching after the shutdown

The Union dispatched only union members until September 15. From the first day of dispatching forward the Union included among the applicants dispatched referents who had not worked for the Employer during the period immediately preceding the shutdown. By August 11 these "new" union member applicants constituted a majority of the individuals dispatched each day by the Union. Thus, the job was in fact restaffed by union members. On September 15 the Union began to allow travelers to register on Book two irrespective of their qualification for the higher Book one, the superior classification. Simultaneously the Union commenced dispatching travelers who had been employed by the Employer at the time of the shutdown. During this process, union members who registered on Book two were dispatched to the Project immediately but the Union allowed no travelers to sign the books until the union members were sent out. By November 12 the Union did dispatched 19 of the 26 travelers who had been employed on the Project in June. Of the remaining seven there is evidence that the Union believed five were no longer interested in or available for dispatch. Of the remaining two, Celestino Martin and Ken Baldwin, Baldwin returned to work as the result of the settlement agreement between the Board and the Employer; Celestino Martin, discussed in greater detail, *infra*, retained other work in a different locale.

Travelers Harris and Carl became members of the Union effective October 2. Harris had been dispatched to the Project on September 16; Carl was dispatched on October 6. Six travelers had been on the August 1 name request list submitted by Ryan to Skidgel: Mathis, Tilley, King, Harris, Dumochelle, and Walker. All had been dispatched by October 16, save Walker who apparently retired on September 10. The 26 travelers who had been employed by the Employer in June were qualified for Book one registration (based on over 3,000 hours worked for the Employer) save for Nagy, Denning, and John Martin. Traveler Maloney was dispatched to two non-Project jobs by the Union on September 16 and 17, respectively, prior to his dispatch to the Project on November 12.

The Union attempted to dispatch three individuals of the 27 on August 25 but these applicants were rejected by the Employer. That same day the Employer accepted the dispatch of a fourth member of that group. Thereafter on October 6 through 15 the Union dispatched and the Employer accepted 10 other members of the 27. All of those dispatched from the 27 were union members. No travelers from the group of 27 were dispatched nor is there any evidence that any attempted to register with the Union.

The Union would not notify a traveler that he could register on the books until it had determined it would dispatch him. As travelers came into the union office immediately prior to being dispatched to the Project, Swearengen asked at least several of them to sign their travel cards at each end or twice. The cards are normally signed initially when submitted to the local where work is sought and a second time when the card is withdrawn from the local indicating the individual is no longer interested in work in the area.

4. Additional events involving the Charging Parties

a. *Celestino "Tino" Martin*

Celestino Martin did not remove his travel card from the union hall after the shutdown. He and other travelers continued to pay travel dues[12] and from time to time checked with the Union regarding work resumption and dispatch opportunities. Swearengen on several occasions told him travelers were not going to be allowed to sign the out-of-work book or commence work until all union members were working. She also asked him if he wished to pull his traveler card. So, too, Skidgel spoke to Martin in early August and told Martin travelers would not be allowed to register on the books nor work at the Project until all registered union members were dispatched. Martin sought from Skidgel a letter stating that the Union would not allow him to register so that he could explain his apparent failure to register for work to the state unemployment agency—apparently Martin's worry was that a failure to register for work suggested a concomitant failure to seek employment perhaps jeopardizing his unemployment compensation. Skidgel refused. Soon thereafter Martin filed his charge on which complaint issued on September 30.

On October 13, by mailgram, the Union sent the following message to Martin:

> We have been trying to reach you for some time now. We have been dispatching quite a few to jobs in San Luis Obispo County but have been unable to contact you. You have been eligible to sign our book number one since July 1 but have never been up to sign for work. Please notify us if you are still interested in work.
>
> C. Ray Skidgel,
> Business Manager UA Local 403

A day or two thereafter, Martin called Skidgel and asked what type of work was available. Skidgel told him

[12] Travel dues, which were paid to the Union pursuant to United Association procedure, were greater than the normal dues paid by union members.

the available work was other than at the Project and Martin expressed interest only in his previous Project job. Skidgel replied that there was no request for referents to the Project at that time. Martin queried Skidgel regarding the mailgram's assertion that he had been eligible to sign the out-of-work book since July 1 when the Union and Skidgel personally had told him he could not sign the books as recent as August. Skidgel denied Martin had been told he could not sign and asked if Martin was calling him a liar. Following this conversation, Martin had no contact with the Union until the hearing.

b. *Ken Baldwin*

Ken Baldwin, a traveler and June employee in the unit, attempted to sign the register at the union hall in July but was told by Swearengen that Skidgel was not allowing travelers to sign the book. Swearengen also asked Baldwin to withdraw his travel card from the Union but he refused. In early August, Baldwin spoke to Skidgel by phone and was told that, when Skidgel started sending travelers to the Project, he would be included. In August and early September, Baldwin regularly checked with the Union regarding dispatch prospects but was told by the Dispatcher that there was no referral request for which he was qualified.

On August 23, Baldwin's wife mailed a letter to United Association President Ward complaining of her husband's having been refused by the Union an opportunitiy to sign the out-of-work book for which he was qualified under the contract. In early September, Baldwin was told by Swearengen at the union hall that the secretary of his home local, Local 114, was trying to reach him. Baldwin responded that he or his wife had been at their residence at all times. Baldwin returned to his home and called Local 114's office. He spoke with the Local 114 secretary-dispatcher who denied that she had attempted to call Baldwin, adding that his name was not on her list of people to be called. Baldwin told her of Swearengen's earlier comments to him on the phone. The secretary-dispatcher again said that she had not tried to call him and then asked if Baldwin "wasn't the one who wrote a letter." Baldwin thereafter spoke to Local 114's business agent, Ray Forman, during the same phone call. Forman told Baldwin that he had arranged with Skidgel to allow the Union to contact Local 114's travelers who had worked on the Project in June directly when travelers were to be dispatched to the job. He added that Skidgel "did not keep his word." Thereafter, in late September, Baldwin had Swearengen pull his travel card and return it to his home local. At the same time he, at Swearengen's request, signed a separate sheet—not part of the formal out-of-work resgistration system—which bore the names of travelers who had been on the Project in June.

Baldwin filed his charge on October 31. He was never dispatched by the Union to the Project but was reemployed directly by the Employer in mid-April 1981 as part of terms of the settlement agreement noted *supra*. In February 1981 while at Local 114's office, Ray Forman told Baldwin that unless he dropped his charge Forman would be "down on him," that Local 114 travelers would have difficulty obtaining traveler work, and that Ray Skidgel would never send him to the Project.

c. *John Martin*

John Martin too was told by Davis at the Project parking lot on July 3 that travelers would not be returning to work and was told by Swearengen and Skidgel in July at the union hall that he could not sign the out-of-work books. Skidgel told him that the Union was going to dispatch union members first and then travelers on a geographical basis: District 16 members first, other California members next, and other members thereafter.

In early August, John Martin learned that he had been requested for dispatch by name by the Employer and spoke to Swearengen at the union hall regarding the matter. Swearengen denied that anyone had been requested by name. In this or in another conversation in early August, when Martin inquired generally about work possibilities, Swearengen asked him if he was a traveler. When he answered that he was, Swearengen asked if he had previously pulled his travel card. He said he had not. Swearengen replied that Skidgel told her that those travelers who had not pulled their cards would be among the last to return to he job. When Martin asked why this was so, Swearengen demurred and referred Martin to Skidgel who was at that time not available. She stated that she was only dispatching union members, Martin asked if he could pull his travel card at that time but Swearengen told him that it was now too late to do that.

Again in late August, John Martin was denied an opportunity to sign the out-of-work books and was again told by Swearengen only union members were being dispatched to the Project. Martin told Swearengen that his traveler friends had been allowed to sign a separate traveler out-of-work list and that he too wished to sign such a list. Swearengen then produced a yellow legal tablet with some signatures on it which Martin was allowed to sign.[13] Later, when travelers had begun to be dispatched, Martin again spoke to Swearengen who told Martin that only travelers from District 16 were then being dispatched. Martin thereafter regularly frequented the union hall but was told on each occasion by Skidgel or Swearengen that there was no request for referral for which, he was eligible. Martin later spoke with Swearengen at the union hall and told her he had learned that the 27 earlier fired from the Project were then being dispatched. Swearengen said that was so. Martin asked about this own dispatch prospects and was told that he would not be dispatched until the 27 had been sent out.

John Martin filed his charge on October 10 and returned to unit work on October 15 through the Union's dispatch procedure. On October 16, while on the job, he was approached by Gene Davis who told him that since he was back at work he should drop the charge he filed

[13] The regular hiring hall books are specially prepared, sequentially numbered columned sheets with provision for multiple entries during the referral procedure as the applicant is processed. The sheet of paper mentioned here was but an *ad hoc* informal list of names. There is no evidence that such a second set of books had been utilized previously by the Union.

with the NLRB against the Union. Martin said he wished to talk to his attorney and Skidgel before he made such a decision. Davis arranged a meeting between Skidgel and Martin. Skidgel and Martin met the following day. Skidgel asked Martin if he felt that he should drop the charges now that he was at work. Martin said he was not "ready yet." Skidgel told Martin that he would not have dispatched Martin to the Project if he had known that Martin had filed charges. The two men disputed the propriety of both Skidgel's and Martin's actions to that time and their views of the purposes of a union Skidgel told Martin, in Martin's recollection: "I just wish you could forget this because, if you don't, you know it'll mean the end of you working as a Union member." Martin agreed but asserted his actions had been necessary. Skidgel told Martin that, if he would immediately withdraw what Skidgel characterized as "this noose going around my neck," few would learn of it and "it won't go any further." Martin said he would like to keep it "that way" until he could talk to his attorney. The two agreed that the status quo would obtain for a time and the conversation ended.

On the job in early November, Martin was again approached by Davis who asked him if he was ready to drop his charges yet. Martin indicate he was not yet ready. The conversation continued with Davis adding: "You know, you've committed suicide as far as working as a Union member goes."

Martin was thereafter approached on the job in late November by Don Bachus and Ray Tillman who introduced themselves as members of Respondent's executive board. Bachus asked Martin if he was going to drop his charge against the Union. Martin said that he was not. The conversation continued. Bachus added:

> Well, there's this much about it, Martin. You can either work here, or you can file charges against this Local, but you can't do both. You've either got to drop the charges or get off the job.

Tillman made similar comments and then Bachus added: "I'll give you till 3:00 o'clock to make up your mind. And then I'll be down to see you." He then asked where Martin was working on the job and the conversation ended.

At 3 o'clock that day, Tillman and a Mr. Villers the union steward for a different employer at the Project, came to Martin's work location at the Project. The three had a conversation which ranged over Martin's continuing refusal to drop his charge and the differing views among the participants regarding the worth of Skidgel as union business representative. Positions remained fixed. Bachus concluded the conversation with the remark: "Well, Martin, you can't say we didn't try to treat you like a gentleman," whereupon the two left.

A few days later Skidgel came to the job and spoke with Martin. He apologized for the fact that the "boys on the E-Board gave you a hard time." Skidgel added that if Martin would drop the charge he would "see to it that all this harassment stops." Martin asserted he would not be "pushed" into dropping his charges because he was "made now." Skidgel told Martin that he would "get these the guys off your back and tell them to leave you along, period, whether you drop the charges or not." Martin thanked Skidgel for the assurance and suggested that, if undisturbed on the job for a time, he might drop the charges but that he would not do so immediately. Skidgel assured Martin that he would undertake to have Martin left alone. Skidgel added, "You know, you better do this before it goes to far, to drop these charges before it goes to far, because if you don't you'll never work on a Union job again." Martin said he agreed but that he had little interest in "too much longevity." Thereafter Martin attempted to withdraw his charge but the Regional Director did not accept his attempted withdrawal.

C. *Analysis and Conclusions*

1. Credibility

The General Counsel adduced evidence from Ryan, the three Charging Parties, and five other travelers who had been employed by the Employer in June.[14] All were mature individuals with substantial experience at the trade. Respondent did not call any witnesses nor did any documentary evidence or stipulations contradict the testimony of the General Counsel's witnesses. Counsel for Respondent cross-examined each witness at length and argues strenuously on brief that the testimony of these witnesses should be heavily discounted or discredited by me based upon: their demeanor inconsistencies within and between their versions of events, and, bias against the Union. For the following reasons, I reject the arguments of counsel for Respondent and credit the testimony of each witness.

First, Respondent is engaged in the difficult task of seeking to discredit witnesses who testified to things they said and did when no contrary witnesses or other evidence was offered to contradict their testimony. Respondent's agents did not testify nor was their failure to do so explained on the record. Second, and independent from any adverse inference resulting from the absence of testimony by Respondent's agents, I quite simply found that each of the General Counsel's witnesses exhibited a sound and convincing demeanor. Each seemed to me to willingly and forthrightly testify as to what he said, heard, or did. I also reject Respondent's suggestion that the travelers were antiunion and hence less than credible. Each traveler witness—including Carl who later became a member of the Union—was a longtime member of the United Association and an affiliated local other than the Union. While several witnesses testified that they believed that the Union's action regarding the instant matter was improper—indeed, there were the Charging Parties herein—I do not consider that evidence of bias, although a proper factor for consideration, sufficient to diminish my substantial confidence in the honesty and forthrightness of each of the General Counsel's witnesses in this case. While Respondent's cross-examination brought forth some minor inconsistencies between the testimony of the witnesses, I find the witnesses were

[14] George Carl, as noted *supra*, became a union member of the Union on October 2, 1980.

truthfully testifying and that their flaws in recitation flowed from (1) normal witness variation in recollection and (2) the witnesses' greater experience as craftsmen rather than in the courtroom. I conclude that no witness demonstrated any lack of honesty or recollection.

Lastly, the witnesses testified individually to individual acts and conduct by Respondent's agents which in their totality present a motive and plan of action so consistent that the testimony as a whole corroborates the individual testimony of each witness. The events described present a motive and course of conduct by Respondent's agents which is both more probable than the alternatives suggested by Respondent and more consistent with the undisputed documentary evidence.[15]

2. Allegations of the complaint

While the normal format for an analysis of mixed 8(b)(1)(A) and (2) allegations discusses threats or similar conduct before discharge or hiring hall conduct, Respondent in the instant case did not directly address the allegations of improper statements attributed to its agents. Respondent does assert various defenses to the discharge/dispatch allegations which have application to the other alleged conduct. Thus, it appears appropriate to address the discharge/dispatch issues initially.

a. *The discharge/failure to dispatch/failure to register allegations*[16]

(1) Findings as to motive

Relying on the credited testimony, *supra*, including the admissions of Respondent's agents as to motive, I find that Respondent engaged in a course of conduct designed to replace traveler employees of the Employer with union members. More specifically, I find that Respondent seized upon the Employer's election of its shutdown option[17] (1) to insist that any recommencement of the job be undertaken by the Employer through a *de novo* staffing through the Union's hiring hall rather than by directly contacting the previous crew, and (2) to distort the registration process by denying travelers the right to register. I specifically reject any contention by Respondent that its actions were solely motivated by legitimate reasons when it insisted on termination of the employees and a new staffing of the job. Respondent's consistently discriminatory handling of the dispatch process augments and sustains this finding of animus.

I further find that Respondent instructed union members to register on the out-of-work books immediately after the shutdown, instructed travelers to withdraw their traveler cards from the local and leave and area, and refused requesting travelers the right to sign the out-of-work books—all to advance the Union's wrongful policy of replacing travelers with union members on the Project. Respondent's agents' admissions that the true purpose of the Union's actions was to restore union members to jobs previously held by travelers rebuts any contention that the instruction to travelers to withdraw their travel cards was but a constitutionally condoned method of preserving work for union members during strikes or lockouts. So, too, the records of the identity and union affiliation of the individuals dispatched in August and September to the Project clearly establish that Respondent's course of conduct did in fact result in the wrongful failure to refer nonunion travelers consistent with contractually provided dispatch priorities and procedures[18] which do not allow discrimination based on union affiliation.

(2) The theory of the General Counsel and limitation of the complaint

Counsel for the General Counsel in her brief argues that the Union:

> . . . unlawfully interfered with the employment of all employees of Pullman Power as of June 30, by unilaterally insisting that they had been terminated and that they must be dispatched through the hiring hall.

The General Counsel's "termination" theory is quite simple. Respondent caused the termination of the entire unit in order to create an opportunity to dispatch only union members. Under this direct 8(b)(2) theory, the remedy would clearly be reinstatement of the entire June crew irrespective of questions of dispatch entitlement or union membership. The General Counsel's amended complaint, however, does not allege either the wrongful causing of the termination of employees by the Union or wrongful discrimination in any way against union members. It alleges discrimination against and seeks relief for travelers only. Under the wider termination theory noted above, both union and nonunion members were held to have been terminated and were required to go through the hiring hall, thus delaying the reemployment of all. The complaint is therefore far more limited in its scope and related than the termination theory argued by the General Counsel on brief. Thus, even though I am in agreement with the General Counsel's theory that, in effect, the Union caused first the termination of and thereafter a delay in the rehire of union members[19] and a very substantial delay in the rehire of travelers—actions improper under the Act—I will not find the Union in so

[15] The dispatch records, including the August 1 dispatch request list of Ryan, are clearly susceptible to the interpretation that the Union was maintaining an open, active policy of discrimination against nonmembers of the Union in the operation of the referral process.

[16] Certain allegations specific to employee Baldwin are discussed separately, *infra*.

[17] I specifically find that there is insufficient evidence to prove that the shutdown by the Employer was caused by any factors other than the general economic dispute involving many locals and a significant number of employers in the area. I have considered Davis' statements to employees that the Union refused an interim agreement with the Employer in order to cause a shutdown which would allow the Union to insist on redispatching the job. Given the wide and general occurrence of the strike and the absence of other more probative evidence, I find Davis' admission standing alone to be insufficient to support a contrary finding.

[18] Geographical distinctions based on work, not union membership, are a permissible basis for contractual employment priority hiring in the construction industry under Sec. 8(f) of the Act.

[19] On brief, counsel for the General Counsel notes that all the union members in the unit in June had been restored to the job August and thus were not "substantially injured" by the Union's conduct. Were I to have found the complaint alleged the termination theory described *supra*, I would not find such conduct insubstantial.

doing violated the Act[20] because such allegation were not included in the amended complaint.[21] Accordingly, I shall not find a violation in the initiation of the termination nor remedy the employment hiatus caused as a result thereof.

(3) The travelers

The amended complaint alleges that the Union wrongfully refused since June 22 to dispatch to the Employer, despite its continuing requests, the Charging Parties and "all other employees similarly situated who were employed . . . by the Employer at [the Project] as of June 30, 1980, based on travel cards from other local union affiliated with the [United Association]."

Respondent commenced dispatching union members on August 4. Given the record evidence of the Union's participation in the contract ratification process in June and August, the absence of any evidence regarding when the Union commenced dispatching referents to other employers after the settlement, and the limitations of the complaint in not pleading the discharge termination theory discussed *supra*, I find there is insufficient evidence to find that Respondent wrongfully withheld the dispatch of applicants to the Employer before August 4. Therefore, this earlier portion of the allegation is therefore without provable merit and will be dismissed.

Respondent discourage and in some cases directly refused travelers the opportunity to register on the out-of-work books at the union hall until mid-September. When allowed to sign, they were forced to sign Book two even though many qualified for Book one. I find that as a consequence of this conduct and as an intended result of the Union's overall course of conduct as described *supra*, travelers were either denied or substantially delayed dispatch to the Project and therefore denied opportunity to become employees of the Employer. Inasmuch as I found this conduct motivated by a desire of the Union to discriminate against applicants based on union membership and, on a secondary basis, on the membership in locals affiliated with the United Association according to their geographical location, I find that the Union has thereby violated Section 8(b)(1)(A) and (2) of the Act.

Two aspects of this determination merit further discussion. First, it is clear that traveler Tilly had been employed in June as the Employer's general foreman and that the Union was specifically requested in August to dispatch him to the job so he could again be employed as the Employer general foremen, a supervisory position. Where the dispatchee is to be a supervisor, a union does not violate Section 8(b)(2) of the Act by discriminating against him because of his union affiliation. However, where the supervisor applicant's treatment is but one inseparable element in a pattern of dispatch refusals for improper reasons, as here, the union including the supervisor in its net violates Section 8(b)(1)(A) of the Act. *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry Local Union No. 137 (Hames Construction and Equipment Co.)*, 207 NLRB 359 (1973), and cases cited therein at 359. I so find here.

Second, counsel for Respondent attacks the sufficiency of the complaint to place in issue the refusal to dispatch the alleged discriminatees, other than the Charging Parties, who are referred to in the complaint only as "similarly situated" individuals.[22] Respondent argues: (1) that the General Counsel has failed to comply with class certification requirements of Federal Rules of Civil Procedure 23; (2) that the "similarly situated" individuals identified by the General Counsel have insufficient demonstrable common interests to constitute a proper "class" and rather have demonstrably different interest; and (3) the decision of the United States Court of Appeals for the Ninth Circuit in *N.L.R.B.* v. *Fort Vancouver Plywood Company*, 604 F.2d 596 (9th Cir. 1979), precludes a class remedy in the instant case.

Respondent opposed what was characterized as the complaint's "class" or "similarly situated" allegation in the opening remarks of the hearing. I ruled then that Board procedures do not require class certification as such. Having considered the matter in light of the briefs of the parties and the authorities cited, I reaffirm my ruling. Respondent has not cited nor have I found Board decisions or other rules or regulations requiring certification of a class of discriminatees. Rather, the Board volumes are replete with decisions, usually involving cases of union membership preference in hiring hall situations, which parallel the instant complaint allegation of discrimination against "similarly situated" applicants. See, for example, *International Association of Bridge, Structural & Ornamental Ironworkers, Local 373 (Building Contractors Association of New Jersey)*, 235 NLRB 232, 233, fn. 7 (1978), where the Board found a "class of 'similarly situated' discriminatees" had been denied employment opportunities in violation of Section 8(b)(1)(A) and (2) of the Act.[23] Indeed, in those cases the "class" was open ended where here the "class" is fixed, and the members listed. I find that the court's decision in *Fort Vancouver, supra*, applies to the issue of reinstatement as a proper remedy. In the instant case, at least by the time of the Employer's offers of reinstatement in April, no such issue remained. I find its teachings thus irrevelant to the issue here. More particularly, I do not find that it prevents a remedy to be directed to the individuals listed in Appendix A attached hereto.

(4) Summary

The continuous refusal of union agents to allow travelers to register on the out-of-work books in the union hall, as described *supra*, was without justification or

[20] Such evidence has been considered in determining the appropriate remedy for the violations found.

[21] While I am aware the complaint may be amended even after the Decision herein, there are fundamental problems inherent in *post hoc* amendments to complaints in hiring hall cases which greatly expand the group of potential discriminatees. See, for example, the difficulties presented the Board in *Wismer and Becker, Contracting Engineers*, 251 NLRB 687 (1980), enforcement denied in other respects 654 F.2d 731 (9th Cir. 1981).

[22] The counsel for the General Counsel made it clear at the hearing that the "similarly situated" individuals referred to in the amended complaint were the 23 named individuals listed with the three Charging Parties in attached Appendix A. Thus, the class is comprised of 23 known, named individuals.

[23] Respondent's argument regarding the different situations pertaining to certain of the identified travelers is further addressed in the portion of this decision entitled "The Remedy."

excuse.[24] Such a refusal of necessity restricts the applicant's employment prospects by denying the applicant otherwise appropriate employment opportunity and therefore had the effect of causing the Employer to fail to recall, reinstate, rehire, or otherwise employ the travelers named in Appendix A because of their lack of membership in the Union, thereby violating Section 8(a)(3) and (1) of the Act. Respondent has thereby violated Section 8(b)(a)(A) and (2) of the Act.

b. *Special allegations as to Baldwin*

As found, *supra*, Baldwin, as with other travelers, was denied an opportunity to register on the out-of-work lists at the union hall and was consequently refused dispatches to the Employer at the Project he would have received but for his lack of membership in the Union. The General Counsel additionally alleges, however, that Baldwin was denied an opportunity to register and receive a timely dispatch because his wife sent a letter to the United Association's president protesting the then occurring failure of Respondent to allow Baldwin to register with the Union and obtain employment. For the reasons set forth, *infra*, I find the evidence insufficient to sustain the General Counsel's burden with respect to this allegation. Accordingly, I shall dismiss this aspect of the complaint, paragraph 12(i). This does not affect my earlier determination regarding the 26 travelers of which Baldwin was one and therefore does not reduce the remedy concerning him.

The General Counsel seeks to sustain its burden of proving Respondent's knowledge of Baldwin's wife's letter by advancing the testimony of Baldwin that in a conversation with a secretary in his home local, Local 114, she asked him, "Aren't you the one who wrote the letter?" The General Counsel argues and I agree that this evidence, which I credit, proves that an employee of Local 114 who was involved at the time in coordinating with Respondent in the dispatch of Local 114's travelers to the Project had knowledge of "a letter." Counsel for the General Counsel errs however when she argued that this evidence:

> . . . creates a reasonable inference that Local 403 also had knowledge of Bonnie Baldwin's complaint, and that it was a crucial factor in the singular failure to refer Baldwin back to Pullman Power. . . .

Conceding the suspicious circumstances regarding Baldwin's continuing failure to receive a dispatch at that time, the General Counsel's optimistically offered inference is rather an innuendo arising from the ambiguous interrogation of Baldwin by a non-agent of Respondent. I will not make the substantial evidentiary leap neccesary to attributed scienter to Respondent here. This is especially so where the General Counsel at no time suggested more direct evidence was unavailable—why not call the secretary at Local 114 whose remark is to be relied on? Further, although not decisive here, it seems unlikely that Respondent's agents who, as found *supra*, directly confessed to Baldwin their illegal motives and intentions on various other occasions would omit to do so regarding his wife's letter if it were known to them. Would Respondent's agents who openly announced to numerous individuals that nonmembers would be kept off the job, and would not be allowed to register for dispatch, and who threatened Baldwin with various adverse consequences unless he dropped his NLRB charge against the Union, have been reluctant to refer to Baldwin's wife letter were it an additional element in their otherwise freely admitted animus against him? Counsel for the General Counsel has not met her burden here.

c. *The travel card allegation*

The General Counsel proved that, commencing with the dispatch of travelers in September, agents of Respondent required travelers to sign their traveler cards twice as a precondition to dispatch. The record further reflects, and I find, that this procedure was effected for the first time by the Union with the announced intention that the double signing—the second signature normally evinces withdrawal from the local union's referral system—would effectuate the Union's removal of travelers from the job and/or elimination from the referral process when union members were available for work.[25] The second signing therefore was a required license given to the Union to withdraw the traveler from the Union's labor market at will. This is but an additional part of the Union's design to give illegal preference to its members.

Respondent argues correctly that the Union or the United Association's internal arrangements for interlocal union work registration is a purely internal union matter which has no legal effect on an employee's legal rights to employment or dispatch, absent union-security obligation deficiencies—a factor entirely absent from this case. Given the pattern of discrimination against travelers in the Union's dispatch system and the simultaneous commencement of the requirement that travelers sign the card before obtaining the job dispatch, I agree with the General Counsel that such conduct also violates Section 8(b)(1)(A) of the Act. The obligation to sign the card twice issues the Union a blank check to be drawn on the applicant's employment entitlements in the Union's jurisdictional area. The employee's awareness of this damoclean sword in the Union's hand is intimately related to that employee's view of the value of obtaining union membership in order to preserve or enhance employment prospects.

d. *Statements of Respondent's agents alleged as violative of Section 8(b)(1)(A)*

Respondent did not challenge through testimony nor address on brief, save through its general attack on the credibility of the General Counsel's witnesses discussed,

[24] As Respondent conceded at hearing and on brief, the various provisions of the United Association's governing regulations apply to the mechanism of traveler card submission and withdrawal only and do not affect directly the rights of a referral applicant to register for employment referral in accordance with contractual procedures.

[25] The Union had also directly told travelers they were not to accept overtime, etc., but these conversations were not alleged as violations of the Act and I need not consider the legal validity of such requests.

supra, the General Counsel's case in support of paragraph 14 of the amended consolidated complaint which sets forth a variety of alleged threats. Based on the credited testimony described *supra* I find:

(1) C. Ray Skidgel

Skidgel, by telephone, told referral applicants he would refer applicants to the Employer at the Project based on membership in the United Association with priority accorded first to union members, then to members of local unions in District 16, then to members of other local unions in California, and finally then to other local members. During the same period, Skidgel told referral applicants that the Union would not allow travel card holders to register on the out-of-work lists of the Union until union members had first been referred for employment. Skidgel also told an employee he would not be able to work as a union member unless he withdrew his NLRB charge against the Union.

(2) Don Bachus and Ray Tillman

Don Bachus and Ray Tillman threatened an employee of the Employer with loss of employment because the employee had filed an unfair labor practice charge against Respondent.

(3) Gene Davis

Gene Davis told the Employer's employees that the Union would not refer travelers to the Project and that the Union had engaged in a strike in order to replace travel card holder employees of the Employer with union members. Davis also threatened an employee by telling him he would never work again on a union job if he continued to pursue his unfair labor practice charge filed against the Union.

(4) Bobby T. Swearengen

Swearengen, in person and by telephone, told travel card holding referral applicants that Respondent would not allow them to register for referral until members of the Union were referred for reemployment and, on other occasions, told travel card holders who were members of locals not within District 16 that they would not be referred out until first union members and then members of locals within the District were referred out.

(5) Conclusion

The acts and conduct described *supra* at (1) through (4) engaged in by individuals found to be agents of Respondent, *supra*, constitute traditional violations of Section 8(b)(1)(A) of the Act and I so find here.

e. *Summary*

(1) Violations not found

I have found that Respondent embarked on a deliberate course of conduct which was designed to and did cause the wrongful transfer of employment from travelers employed by the Employer at the Project to union members. More particularly I have made the following findings:

There is insufficient evidence to find that Respondent caused the shutdown of the Employer for improper reasons.

There is substantial evidence to support a finding that Respondent caused the cessation of the employment relationship of the Employers unit employes—both union member and traveler—who were shut out in July in order to replace the travelers with union members. However, because the amended complaint does not allege the severing of the employment relationship by Respondent, or any other wrongful conduct directed against the unit as a whole including union members rather than travelers alone, I have determined—despite the arguments of counsel for the General Counsel on brief—that the amended complaint will not support any finding of a violation with respect to any of these contentions.

I have found there is insufficient evidence to find that Respondent knew of Baldwin's letter to the United Association's president. Therefore, I have found there is insufficient evidence to prove that Respondent discriminated against Baldwin based on knowledge thereof.

(2) The 8(b)(1)(A) and (2) violations found

I have found that Respondent failed and refused to operate its hiring hall in accordance with established nondiscriminatory rules but rather manipulated the system to favor union members and to discriminate against travelers in violation of Section 8(b)(1)(A) and (2) of the Act by the following acts and conduct: failing and refusing to dispatch travelers who were requested by name by the Employer in accordance with normal hiring hall procedure; failing and refusing to allow travelers to register on the hiring hall out-of-work books; and dispatching union members to the Employer when travelers would have been dispatched under normal hiring hall procedure save for the conduct described above.

(3) The 8(b)(1)(A) violations found

I have found that Respondent required travelers to sign their travel cards in a manner signifying that they were no longer seeking employment in the craft within the geographical area covered by the Union; thus, Respondent is encouraging travelers to join the Union to insure continued oportunities to pursue employment within the area without fear of discrimination.

I found that Respondent violated Section 8(b)(1)(A) of the Act by threatening and coercing employees and employment applicants by telling them the following: that the Union had caused the Employer's shutdown and subsequently insisted on dispatching the job anew in order to deprive travelers of their jobs; that travelers cound not register on the Union's out-of-work books or, in other cases, that traveler registration would be delayed to allow union members and members of District 16 local unions to obtain dispatch opportunity; that travelers would not be dispatched to the Employer at the Project until union members had been dispatched and other members of District 16 local obtained dispatch priority over other local union members; and that the employee

who filed charges against the Union with the NLRB would not be able to work and or would lose his job or, impliedly, would be harmed if he did not drop his charges.

Upon the foregoing findings of fact and upon the entire record herein, I make the following:

CONCLUSIONS OF LAW

1. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Union, by telling travelers that their registration and/or dispatch would be delayed or denied in order to provide dispatch priority to union members and thereafter to those members of local unions within District 16 followed by other California local union members and lastly other local union members; by telling the Employer's employees that the Union had caused the Employer's job shutdown and subsequently insisted on redispatching the unit positions through the hiring hall in order to eliminate travelers positions in the unit and replace those individuals with union members; by requiring travelers as a condition precedent to obtaining a dispatch, to sign their travel cards in a manner indicating they were no longer seeking work in the area; and by threatening travelers with harm, loss of employment, or denial of future employment unless they dropped charges filed with the NLRB against the Union, in each case, violated Section 8(b)(1)(A) of the Act.
4. The Union by failing and refusing to allow registration and by delaying in allowing the registration of travelers on the referral system out-of-work books, and by the failure and refusal to dispatch travelers who were requested by name by the Employer in accordance with normal hiring hall procedure, and by failing and refusing to dispatch to the Employr travelers who would have received such a dispatch but for their lack of membership in the Union or certain more favored locals or because of the illegal conduct described immediately above, violated Section 8(b)(1)(A) and (2) of the Act.
5. The above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
6. Except as described above and in greater detail in the body of this Decision, Respondent has not otherwise violated the Act.

THE REMEDY

Having found that the Union engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Union discriminatorily delayed and/or denied referral to the travelers named on Appendix A, I shall recommend that the Union notify the Employer that it has no objection to the employment of or retention of the travelers. Further, I shall recommend the Union notify each named traveler that the Union's hiring hall facilities will be available to him on an equal and nondiscriminatory basis with union members, travelers, and other job applicants and registrants.

I shall also recommend that the Union make each traveler whole for any loss of earnings[26] he may have suffered as a result of having his dispatch to the Employer delayed or denied by the Union either through name request or the normal application of hiring hall procedures had they been nondiscriminatorily applied in July and thereafter—whichever dispatch would have occurred first. Other nonwage benefits and entitlements, including accrued hours to be used for group eligibility under the dispatch classification, will also be restored to each traveler in accordance with the above. Backpay shall be computed in accordance with Board policy as described in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and shall accrue interest in accordance with Board policy as described in *Florida Steel Corporation*, 231 NLRB 651 (1977), and *Olympic Medical Corporation*, 250 NLRB 146 (1980).[27]

In light of the wide dissemination of knowledge of the Union's activities among union members and travelers employed at the jobsite, noted *supra*, in view of the fact that travelers from a number of other locals of the United Association were discriminated against, and, finally, because the record contains evidence that officials of sister locals of the Union were aware of Respondent's pattern of discrimination against travelers and cautioned their own members against exercising their Section 7 rights within the jurisdiction of the Union so as to avoid provoking further discrimination by the Union against travelers, it is especially important that the instant remedy of the Union's wrongdoing be communicated, insofar as possible, to those who may have been or may be adversely influenced by its occurence. Accordingly, I shall require that the normal notice posting required of Respondent be expanded as follows. The Union will be required, consistent with the Board's Decision in *International Association of Bridge, Structural & Ornamental Ironworkers, Local 480, AFL-CIO (Building Contractors of New Jersey)*, 235 NLRB 1511 (1978), to cause the remedial notice, Appendix B, to be printed in a newspaper or so many newspapers as are necessary to achieve general circulation within its jurisdictional area. I shall also require the notice to be placed in any newsletter and/or newspa-

[26] The measure of earnings shall be the wage or salary of the position to which the traveler would have been dispatched or employed, including supervisory positions. *Local Union No. 725 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (Powers Regulator Company)*, 225 NLRB 138 (1976).

[27] While there was some evidence regarding the possibility of unavailability of some of the travelers for employment during certain times during the backpay period, I find the question was not sufficiently litigated to permit conclusive determinations as to particular travelers. I shall therefore defer any resolution of such issues to the compliance stage of this proceeding. *Local Union 725, supra*, 225 NLRB 146 at fn. 24. At such time Respondent would have full opportunity to inquire into the question as to when or whether particular travelers would have returned to the Employer's employ had a nondiscriminating referral process been utilized. Cf. *Trident Seafoods Corporation*, 244 NLRB 566 (1979), enfd. 642 F.2d 1148 (9th Cir. 1981). I note further, however, that multiple hiring hall registration of travelers shall not, under the circumstances of this case, toll backpay. See *International Association of Bridge, Structural & Ornamental Ironworkers, Local 45 (Building Contractors Association of New Jersey)*, 235 NLRB 211, 212, fn. 5 (1978).

per sent to its members by the Union. The Union will be further ordered to mail a copy of the notice to each and every traveler as well as to each and every local union to which the travelers belonged at the time of the Union's discrimination against them and to each and every local union within District 16. The Union shall also be required to submit appropriate signed copies of the notice to the Regional Director for submission to the Employer for posting, should it be willing. Finally, the Union will be ordered to preserve and, upon request, provide opportunity to the Director or his agents, for inspection and copying, all records necessary to determine the amount of backpay due under the terms of this Order and to insure that its terms have been fully complied with.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[29]

The Respondent, Plumbers and Pipefitters Local Union No. 403, affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Coercing and restraining employees by telling travelers that their union hiring hall registration and/or dispatch would be delayed or denied in order to provide registration and dispatch priority to union members first, followed by District local union members, other California local union members, and finally other local union members.

(b) Coercing and restraining employees by telling them that the Union had caused the Employer's shutdown and subsequently insisting on redispatching the Project's unit positions in order to eliminate the travelers employed on the Project and to replace those individuals with union members.

(c) Coercing and restraining employees by telling them that, as a condition precedent to dispatch to the Employer, they must sign their travel cards in a manner indicating they were no longer seeking work in the area, thus allowing the Union to terminate their future employment rights at will.

(d) Threatening employees with harm, loss of employment, or denial of future employment unless they dropped charges filed with the National Labor Relations Board against the Union.

(e) Failing and refusing to allow travelers to sign the union hall referral system out-of-work book because the travelers were not members of the Union.

(f) Failing and refusing to dispatch travelers to the Employer for employment in the unit at the Project when said travelers were requested to by the Employer by name who would have therefore been dispatched in accordance with contractually established referral system policy and practice but for the Union's refusal to allow travelers to register because said travelers were not members of the Union, thereby causing the Employer to discriminate against them in violation of Section 8(a)(3) and (1) of the Act.

(g) Failing and refusing to dispatch travelers to the Employer for employment in the unit at the Project who would have been dispatched in accordance with contractually established referral system policy and practice but for the Union's refusal to allow traveler's registration either in a timely manner or in the current book priority because said travelers were not members of the Union, thereby causing the Employer to discriminate against them in violation of Section 8(a)(3) and (1) of the Act.

(h) Causing or attempting to cause the Employer, or any other employer, to discriminate against the employees listed on Appendix A of this Decision in violation of Section 8(a)(3) and (1) of the Act because of the employee's lack of membership in the Union.

(i) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Keep and retain for the period the Employer employs the Union's hiring hall to procure unit employees at the Project permanent written records of its hiring and referral operations which will be adequate to disclose fully the basis on which teach referral is made, and upon the request of the Regional Director for Region 31, or his agents, make available for inspection, at all reasonable times, any records relating in any way to the hiring and referral system.

(b) Submit four quarterly reports to the Regional Director for Region 31, due 10 days after the close of each calendar quarter subsequent to the issuance of this Decision and Order, concerning the employment of the nonmember applicants listed in Appendix A of this Decision. Such reports shall include the date and number of job applications made to Respondent, the date and number of actual job referrals by Respondent, and the length of such employment during such quarter period.

(c) Place the referral register, for the above-described period, on a table or ledge in the hiring hall for easy access and inspection by the applicants, as a matter of right, upon the completion of each day's entries in such registers.

(d) Make whole the individuals listed in Appendix A for any loss of earnings and other benefits they may have suffered by reason of the discrimination against them with appropriate interest in the manner set forth in the section of this Decision entitled "The Remedy."

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records, reports, work lists, and other documents necessary to analyze the amount of backpay due under the terms of this Decision and otherwise to insure the terms of this Order have been fully complied with.

[29] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(f) Post at all places where notices to employees, applicants for referral, and members are posted copies of the attached notice marked "Appendix B."[30] Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(g) Cause, at its expense, the attached notice marked "Appendix B" to be printed in a newspaper or newspaper sufficient to achieve general circulation through the Union's jurisdiction and in any newsletter or newspaper prepared by the Union and distributed by its members.

(h) Send to each of the individuals listed on Appendix A and to each of the locals unions of the United Association of which each individual was a member in June 1980, and each local union in District 16, a signed copy of the attached notice marked "Appendix B."

(i) Return to the Regional Director appropriate signed copies of the attached notice marked "Appendix B" for retransmission to the Employer for posting, should it be willing, at appropriate locations at the Project.

(j) Notify the Regional Director for Region 31, in writing within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[30] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

1. Steve Selby
2. Arthus Mathis
3. Charles Gamble
4. Harold Holder
5. Don Tilley
6. Leo Bernhardt
7. Andrew Peak
8. Angelo Guidice
9. Kenneth Baldwin
10. John Hughes
11. Doug King
12. Ken Harris
13. Celestino Martin
14. Rick Dumouchelle
15. Virgil Walker
16. Al Furtado
17. Sherman Conner
18. George Carl
19. Richard Sims
20. Ben Koens
21. Sadao Yabuno
22. Sage Dibble
23. John Nagy
24. Terry Denning
25. John Martin
26. John Maloney